

ASSEMBLY BILL

No. 1918

Introduced by Assembly Member Montanez

February 10, 2004

An act to amend Sections 44977 and 45196 of the Education Code, relating to school employees.

LEGISLATIVE COUNSEL'S DIGEST

AB 1918, as introduced, Montanez. School employees.

Under existing law, when a certificated or classified school employee exhausts all available sick leave and continues to be absent from his or her duties on account of illness or accident for an additional period of 5 school months, the employee during those 5 months receives the difference between his or her salary and the sum that is actually paid a substitute employee employed to fill his or her position during his or her absence or, if no substitute employee was employed, the amount that would have been paid to the substitute had he or she been employed.

Under existing law, the family temporary disability insurance program provides up to 6 weeks of wage replacement benefits to workers who take time off work to care for a seriously ill child, spouse, parent, domestic partner, or to bond with a new child.

This bill would allow a school employee, in a school district that is not subject to the disability compensation laws, to use up to 6 weeks of the 5-month period during which the employee receives differential pay to take time off work to care for a seriously ill child, spouse, parent, domestic partner, or to bond with a new child.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 44977 of the Education Code is amended to read:

44977. (a) (1) During each school year, when a person employed in a position requiring certification qualifications has exhausted all available sick leave, including all accumulated sick leave, and continues to be absent from his or her duties on account of illness or accident for an additional period of five school months, whether or not the absence arises out of or in the course of the employment of the employee, the amount deducted from the salary due him or her for any of the additional five months in which the absence occurs shall not exceed the sum that is actually paid a substitute employee employed to fill his or her position during his or her absence or, if no substitute employee was employed, the amount that would have been paid to the substitute had he or she been employed. The school district shall make every reasonable effort to secure the services of a substitute employee.

(2) *Of the five-month period allowed pursuant to paragraph (1), up to six weeks may be used to care for a seriously ill child, spouse, parent, domestic partner, or to bond with a minor child within one year of the birth or placement of the child in connection with foster care or adoption. For purposes of this paragraph, a person is seriously ill if the person suffers an illness, injury, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice, or residential health care facility, or continuing treatment or continuing supervision by a health care provider, as defined in Section 12945.2 of the Government Code. For purposes of this paragraph, the following terms have the following meanings:*

(A) *“Child” means a biological, adopted, or foster son or daughter, a stepson or stepdaughter, a legal ward, a son or daughter of a domestic partner, or the person to whom the employee stands in loco parentis.*

(B) *“Domestic partner” has the same meaning as defined in Section 297 of the Family Code.*

(C) *“Parent” means a biological, foster, or adoptive parent, a stepparent, a legal guardian, or other person who stood in loco parentis to the employee when the employee was a child.*

(D) *“Spouse” means a partner to a lawful marriage.*

1 (3) *Paragraph (2) applies to a public school employer, as*
2 *defined in Section 3540.1 of the Government Code, that is not*
3 *subject to Part 2 (commencing with Section 2601) of Division 1 of*
4 *the Unemployment Insurance Code.*

5 (b) For purposes of subdivision (a):

6 (1) The sick leave, including accumulated sick leave, and the
7 five-month period shall run consecutively.

8 (2) An employee shall not be provided more than one
9 five-month period per illness or accident. However, if a school
10 year terminates before the five-month period is exhausted, the
11 employee may take the balance of the five-month period in a
12 subsequent school year.

13 (c) The governing board of every school district shall adopt a
14 salary schedule for substitute employees. The salary schedule shall
15 indicate a salary for a substitute for all categories or classes of
16 certificated employees of the district.

17 (d) ~~Excepting~~ *Except* in a district the governing board of which
18 has adopted a salary schedule for substitute employees of the
19 district, the amount paid the substitute employee during any month
20 shall be less than the salary due the employee absent from his or
21 her duties.

22 (e) When a person employed in a position requiring
23 certification qualifications is absent from his or her duties on
24 account of illness for a period of more than five school months, or
25 when a person is absent from his or her duties for a cause other than
26 illness, the amount deducted from the salary due him or her for the
27 month in which the absence occurs shall be determined according
28 to the rules and regulations established by the governing board of
29 the district. The rules and regulations shall not conflict with rules
30 and regulations of the State Board of Education.

31 (f) ~~Nothing in this section shall be construed so as to~~ *This*
32 *section does not* deprive any district, city, or city and county of the
33 right to make any reasonable rule for the regulation of accident or
34 sick leave or cumulative accident or sick leave without loss of
35 salary for persons acquiring certification qualifications.

36 (g) This section ~~shall be~~ *is* applicable whether or not the
37 absence from duty is by reason of a leave of absence granted by the
38 governing board of the employing district.

39 SEC. 2. Section 45196 of the Education Code is amended to
40 read:

1 45196. (a) (1) When a person employed in the classified
2 service is absent from his *or her* duties on account of illness or
3 accident for a period of five months or less, whether or not the
4 absence arises out of or in the course of employment of the
5 employee, the amount deducted from the salary due him *or her* for
6 any month in which the absence occurs shall not exceed the sum
7 which is actually paid a substitute employee employed to fill his
8 *or her* position during his *or her* absence.

9 (2) *Of the five-month period allowed pursuant to paragraph*
10 *(1), up to six weeks may be used to care for a seriously ill child,*
11 *spouse, parent, domestic partner, or to bond with a minor child*
12 *within one year of the birth or placement of the child in connection*
13 *with foster care or adoption. For purposes of this paragraph, a*
14 *person is seriously ill if the person suffers an illness, injury,*
15 *impairment, or physical or mental condition that involves*
16 *inpatient care in a hospital, hospice, or residential health care*
17 *facility, or continuing treatment or continuing supervision by a*
18 *health care provider, as defined in Section 12945.2 of the*
19 *Government Code. For purposes of this paragraph, the following*
20 *terms have the following meanings:*

21 (A) *“Child” means a biological, adopted, or foster son or*
22 *daughter; a stepson or stepdaughter; a legal ward, a son or*
23 *daughter of a domestic partner; or the person to whom the*
24 *employee stands in loco parentis.*

25 (B) *“Domestic partner” has the same meaning as defined in*
26 *Section 297 of the Family Code.*

27 (C) *“Parent” means a biological, foster, or adoptive parent, a*
28 *stepparent, a legal guardian, or other person who stood in loco*
29 *parentis to the employee when the employee was a child.*

30 (D) *“Spouse” means a partner to a lawful marriage.*

31 (3) *Paragraph (2) applies to a public school employer, as*
32 *defined in Section 3540.1 of the Government Code, that is not*
33 *subject to Part 2 (commencing with Section 2601) of Division 1 of*
34 *the Unemployment Insurance Code.*

35 **Excepting**

36 (b) *Except in a district the governing board of which has*
37 *adopted a salary schedule for substitute employees of the district,*
38 *the amount paid the substitute employee during any month shall*
39 *be less than the salary due the employee absent from his *or her**
40 *duties.*

1 **Entitlement**

2 (c) *Entitlement* to sick leave ~~provisions~~ under this section, if
3 any, shall be considered “entitlement to other sick leave” for the
4 purposes of computing benefits under the provisions of Section
5 45192 if the absence is for industrial accident or illness and shall
6 be used after entitlement to all regular sick leave, accumulated
7 compensating time, vacation or other available paid leave ~~has been~~
8 *is* exhausted.

9 ~~The foregoing provisions shall~~

10 (d) *This section does not apply to any school district which that*
11 *adopts and maintains in effect a rule pursuant to which provides*
12 ~~that~~ a regular classified employee ~~shall~~ *is* once a year ~~be~~ credited
13 with a total of not less than 100 working days of paid sick leave,
14 including days to which he *or she* is entitled under Section 45191.
15 ~~Such~~ *Those* days of paid sick leave in addition to those required by
16 Section 45191 shall be compensated at not less than 50 percent of
17 the employee’s regular salary. The paid sick leave authorized
18 under ~~such a~~ *that* rule shall be exclusive of any other paid leave,
19 holidays, vacation, or compensating time to which the employee
20 may be entitled. ~~Nothing in this section shall~~ *This section does not*
21 preclude the governing board from adopting ~~such~~ a rule *as*
22 *described in this subdivision.*

